



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

11 April 2002

Certified Mail/Return Receipt Requested

Mr. Melvin V. Kilgore, Jr.
President
US Analytical, Inc.
212 Holmes Avenue, N.E.
Huntsville, AL 35801

Subject: Agency-Level Protest of Solicitation # PR-HQ-02-10028

Dear Mr. Kilgore:

This letter is in response to your Agency-level protest dated 20 March 2002, submitted on behalf of US Analytical, Inc. (USAI). Your protest alleges that the subject solicitation is defective since it does not allow all contractors a fair opportunity to compete for contract award, and that USAI was specifically and deliberately hindered in submitting a bid. The following discussion responds to your allegation.

Solicitation Provision L.2, Item 6, allows qualified laboratories that share equipment, facilities and/or personnel, i.e., "sharing laboratories," to submit bids in response to the solicitation. The solicitation, however, states that any subsequent contract awards to the sharing laboratories, when combined, will not exceed the maximum number of samples that a single laboratory can provide.

FAR 6.202 allows for full and open competition after exclusion of sources to establish or maintain alternative sources of supplies or services in order to "ensure the continuous availability of a reliable source of supplies or services" and to "satisfy projected needs based on a history of high demand." The Agency's historical need for quick and accurate chemical analyses has been high, and is expected to remain high in the future.

The Agency has requirements for analytical services for the analysis of hazardous waste aqueous and soil/sediment field samples. The results of these analyses are used in hazardous waste investigations, remedial and emergency cleanups, and enforcement actions under the Superfund program. Analytical services provided under these proposed contracts must consistently be of known and documented quality as required by the Superfund Amendments and Reauthorization Act. The data derived from the contracted analyses is of such a critical nature to the Agency's mission that non-availability of sources to perform the analyses, or unacceptable data, could potentially result in delays and/or costly and unsupported actions throughout the Superfund program. Delays could result in EPA's failure to meet statutorily mandated decisions

and remedial action milestones. It is essential that all possible measures be taken to ensure that the Agency's contracts for chemical analytical services produce satisfactory high quality data.

In order to provide the aforementioned services, laboratories must meet stringent pre-award qualification requirements, then maintain a high level of quality control as well as specialized analytical equipment after award. Historically, while numerous vendors are able to meet the pre-award qualification requirements, fewer are able to sustain the quality level required, and therefore cannot be depended on for reliable data.

In addition, sharing laboratory equipment, facilities, and/or personnel may have significant adverse impacts on the Agency and the Contract Laboratory Program (CLP). Highly contaminated samples analyzed at one laboratory may result in several days of down time, preventing scheduling of samples at this laboratory. If the equipment is being shared between two laboratories, then the Agency is prevented from scheduling samples for two laboratories rather than a single laboratory. The end result is a reduction in capacity for two laboratories. If a laboratory withdraws from the CLP because of bankruptcy, difficulty meeting contract specifications, or laboratory fraud investigations, then the Agency loses twice the capacity. The magnitude and risk of laboratories sharing equipment and/or personnel is doubled, thereby creating an intolerable environment for potential fraud investigations.

For these reasons, it is determined to be in the Government's best interest to allow full and open competition after the exclusion of sources in order to ensure the continuous availability of reliable sources to meet projected needs. This exclusion of sources means that the Agency will limit the number of samples that a single laboratory may analyze per month, thereby allowing the Agency to make multiple awards for the same services. Furthermore, in the event there are multiple qualified laboratories that share equipment and/or personnel, the Agency will allow the sharing laboratories to submit bids in response to any given solicitation. However, any subsequent contract awards to the sharing laboratories, when combined, will not exceed the maximum number of samples that a single laboratory can provide. (Note: Amendment 0005 to the subject solicitation will be issued shortly, and a Section B clause has been added that states in some instances it may be necessary to exceed monthly maximum quantities. Therefore, it is possible that a laboratory may have samples scheduled beyond its monthly maximum quantity.)

Therefore, based on my review, I have determined that the Agency has properly exercised its right to exclude sources pursuant to FAR 6.202, and that the subject solicitation is not unduly restrictive in meeting the agency's minimum needs. Please note that you have the right to request a review of this decision by the Head of the Contracting Activity. You may do so by sending a written request within ten (10) calendar days of receipt of this letter to:

Judy S. Davis
Director, Office of Acquisition Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Mail Code 3801R
Washington, DC 20460

Thank you for your interest in doing business with EPA.

Sincerely,

Thomas Valentino
Contracting Officer